

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

JAN 31 2003

OFFICE OF
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Re: Requests for Deferral of Hearing Fees
Fee Control No. 00000RROG-03-060

Dear Counsel:

This letter is in response to your requests filed on behalf of the National Association of Broadcasters (**NAB**), The Word Network (Word), and Johnson Broadcasting of Dallas, Inc. (**Johnson**), respectively, for deferral of the hearing fees in the EchoStar – DirecTV merger proceeding. See *EchoStar Communications Corporation*, FCC 02-284, released October 18, 2002 (Hearing Designation Order, hereafter **HDO**).

The proceeding in question involves the proposed transfer of control of various Commission licenses, including direct broadcast satellite (DBS) authorizations, space station authorizations, earth station authorizations, and other related authorizations, and the subsequent merger of EchoStar Communications Corporation and DirecTV Holdings, LLC. The entities seeking deferrals were named as parties to the proceeding pursuant to 47 C.F.R. § 1.221(d). See HDO, ¶ 297.¹

¹ On December 10, 2002, the applicants seeking transfer of control (Echostar, General Motors Corporation, and Hughes Electronics Corporation) filed a request with the Commission to dismiss their applications pursuant to 47 C.F.R. § 25.152(a). By **Order**, FCC 03-4, released January 10, 2003, the Commission granted the request for dismissal and directed the presiding judge to terminate the hearing proceeding. By **Order**, FCC 03-01, released January 13, 2003, the presiding judge terminated the proceeding.

You each recite that no hearing fee should be required of non-applicant entities **named as** parties to the proceeding. In this regard, you state that 47 C.F.R. § 1.1107 makes no reference to the payment of a hearing fee by a non-applicant party. In addition, you state that the Commission made clear it would not require fees in these circumstances when it implemented its rules governing processing fees relevant to hearing proceedings. You point out that although the **HDO** afforded the parties **30** days to file an amended application, you were required to file notices of appearance within 20 days accompanied by the requisite fee. You submit that the fee should be deferred pending the filing of any amendment and ultimately waived.

The fee schedule governing filings in the international services set forth in Section 1.1107 provides for hearing fees in direct broadcast satellite cases in the following circumstances: "Hearing (New and Major/Minor change, comparative construction permit hearings; Comparative license renewal hearing)." Item 11(e). ~~These~~ situations are not involved in this proceeding. Moreover, in implementing Section 8, the Commission stated that it would not assess a fee on individuals or organizations **named as** parties to the hearing by the Commission on its **own** motion, **as** was the case here. *See Establishment of a Fee Collection Program*, 2 FCC Rcd 947, 985 n. 134 (1987). Accordingly your requests are granted and the hearing fees are waived. *See* also Public Notice, DA **02-3173**, November 14, 2002.

If you have any questions concerning **this** letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", is written over a horizontal line.

Mark A. Reger
Chief Financial Officer

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC/MFI ON NOV 18 2002

In the Matter of)
)
Application of)
)
EchoStar Communications Corporation, (a Nevada)
Corporation), ~~General~~ Motors Corporation, and)
Hughes Electronics Corporation (Delaware)
Corporations))
)
(Transferors))
)
and)
)
EchoStar Communications Corporation (a)
Delaware Corporation))
)
(Transferee))

CS Docket No. 01-348

To: Chief Administrative Law Judge Richard L. Sippel

Motion to Defer Hearing Fee

The National Association of Broadcasters (hereinafter "**NAB**") ,by and through counsel and pursuant to Section 1.1117 of the Commission's Rules, 47 C.F.R. § 1.1117, hereby files a Motion to Defer, or in the Alternative, Waive Hearing Fee. Although NAB believes that it should not required to submit a **fee** to participate in the above-captioned matter, NAB styles its motion **as** one to defer the fee out of an abundance of caution.

In a Hearing Designation **Order** released October 18,2002,' **the** Commission designated the above-captioned matter for hearing and designated NAB a party to proceeding pursuant to Section 1.221(d) of the Commission's **rules**, 47 C.F.R. §

¹ **Hearing Designation Order in CS Docket No. 01-348, FCC 02-284, released October 18,2002 ("Hearing Order").**

1.221(d).² NAB was directed to file a Notice of Appearance pursuant to Section 1.221(e) of the Commission's Rules, 47 C.F.R. § 1.221(e), and also instructed **as** follows:

Such written appearance must also be accompanied (sic) by the fee specified in Section 1.1108 of the Commission's Rules or be accompanied by a deferral request pursuant to Section 1.1117 of the Commission's Rules?

NAB believes that no hearing fee should be required of non-applicant entities named **as** parties to the proceeding, and, accordingly, files this Motion to Defer Hearing Fee. In the event a hearing fee will be required, **NAB** requests that payment of the fee be deferred, at least until any amendments are filed in this proceeding: and if **NAB** chooses to participate in the hearing on these applications, **as** amended, **NAB** requests that the hearing fee, ultimately be waived.

When initially adopting the schedule of application processing fees relevant to hearing applications, the Commission stated:

We will not, however, require the hearing fee for parties designated for hearing in a renewal, assignment/transfer, or revocation proceeding. These actions are in the nature of an enforcement action against and licensee and the imposition of a fee against the licensee would be inconsistent with the licensee's right to a hearing?

In the footnote attached to **this** finding, the Commission stated:

As we proposed in the NPRM, we will not assess a fee in the following situations: *individuals* or *organization named parties* (47 C.F.R. § 1.221); intervenors (47 C.F.R. § 1.223); non-parties who wish to *appear* and give evidence (47 C.F.R. § 1.225); those *who file Petitions to Deny* (47 C.F.R. § 73.3584); or **Informal** Objections (47 C.F.R. § 73.3587).⁶

² *Hearing Order* at ¶ 297.

³ *Id.*

⁴ At paragraph 295 of the *Hearing Order*, the Commission gave the parties an opportunity to **amend their** applications within 30 days. NAB, however, must file its **Notice of Appearance** within 20 days.

⁵ *Report and Order in Gen. Docket No. 86-285*, 2 FCC Rcd 947, 966 (1987) ("1987 Fee Order"), *recon. den.* 3 FCC Rcd 5987 (1988).

⁶ *Id.* at 985, n. 134. Although the language quoted above relates to **Mass Media Bureau** services, the Commission specifically made the hearing fee for proceedings involving **D i t Broadcast Satellites** subject to the limitations established in the 1987 Fee Order. *Id.* at 970.

Therefore, **as** a party named to the proceeding, **as** well **as** one that filed a Petition to Deny the transfer of licenses at issue,⁷ **NAB** should not be **required** to submit a fee to participate in **this** hearing.

In addition, pursuant to Section 1.1117(a) of the Commission's rules, 47 C.F.R. § 1.1117(a), deferral and/or waiver of the hearing fee would promote the public interest because imposition of the fee would undermine **NAB's** right, and compromise **NAB's** ability, to participate in the Commission's licensing process under Section 309(d) of the Communications Act of 1934, **as** amended. 47 USC § 309(d). Under **this** provision of the Act, any party in interest may file a petition to deny and, "Any hearing subsequently held upon such application shall be a full hearing in which the applicant and all other parties in interest shall be permitted **to** participate." 47 USC § 309(e). Conditioning **NAB's** participation on the payment of a substantial hearing fee **runs** counter to the Act and eviscerates its **right to** fully participate in **this** hearing.

⁷ **Petition to Deny**, filed by National Association of Broadcasters in CS Docket No. 01-348, February 4, 2002.

Accordingly, the Commission's imposition of a hearing fee on NAB to participate in the above-captioned matter is neither justified nor permitted. In the event the Commission determines that NAB nevertheless must submit **a** hearing fee to participate in **this** proceeding, NAB requests that the fee be deferred at least until the applicant parties file any amendment, and, ultimately waived, based upon NAB's showing of good cause for waiver of the fee, **as well as** NAB's long-standing commitment to assisting the Commission in resolving **this** matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lawrence A. Walke".

Henry L. Baumann
Ben Ivins
Lawrence A. Walke
National Association of **Broadcasters**
1771 N Street, N.W.
Washington, **D.C. 20036**
(202) 429-5430

November **15,2002**

CERTIFICATE OF SERVICE

I, Angela Barber, hereby certify that true and correct copies of the foregoing Motion to Defer Hearing Fee were served on the following individuals by first class mail, postage prepaid on ~~this~~ 15th day of November, **2002**:

~~General~~ Motors Corporation, Hughes Electronics Corporation

~~Gary~~ M. Epstein
James H. Barker
Arthur **S.** Landerholm
Latham & Watkins
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EchoStar Communications Corporation

Pantelis Michalopoulos
Philip L. Malet
Rhonda M. Bolton
Steptoe & Johnson, L.L.P.
1330 Connecticut Avenue, N.W.
Washington, D.C. **20036-1795**

National Rural Telecommunications Cooperative

~~Jack~~ Richards
Kevin J. Rupy
Keller and Heckman, L.L.P.
1001 G ~~Street~~, N.W.
Washington, D.C. **20001**

~~American~~ Cable Association

Matthew M. Polka, President
One Parkway Center, Suite **212**
Pittsburgh, PA **15220-3505**

Northpoint Technology, Ltd.

~~Deborah~~ A. Lathen
Lathen Consulting
1650 Tysons Blvd., Suite **1150**
McLean, VA **22102**

Pegasus Communications Corp.

Scott Blank, ~~Senior~~ Vice President and General Counsel

225 City Line Avenue, Suite **200**

Bala Cynwyd, PA 19004

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~~Arthur~~ Belendiuk

Anthony M. Alessi

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5028 Wisconsin Avenue, N.W., Suite **301**

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Family Stations, Inc., and North Pacific International Television, Inc.

Alan C. Campbell

Peter Tennenwald

Kevin M. Walsh

Irwin Campbell & Tennenwald, P.C.

1730 Rhode Island Avenue, N.W., Suite 200

Washington, D.C. **20036-3101**

Communication Workers of America

Debbie Goldman

George Kohl

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Washington, D.C. **20001**

Carolina Christian Television, Inc., and LeSea Broadcasting Corporation

Mark A. Balkin

Joseph C. Chautin

~~Hardy~~, Carey & Chautin, L.L.P.

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McLean, VA **70005**

Univision Communications, Inc.

Scott R. Flick

Paul A. Cicelski

Michael W. Richards

Shaw Pittman, L.L.P.

2300 N Street, N.W.

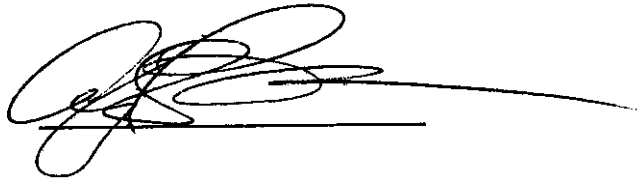
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Eagle III Broadcasting, L.L.C.
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A handwritten signature in black ink, appearing to be "W.D. Silva", written over a horizontal line.